99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-787

CONSERVATION SERVICE REFORM ACT OF 1986

AUGUST 12, 1986.—Ordered to be printed

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Mr. HALL of Texas, from the committee of conference, submitted the following

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CONFERENCE REPORT

U.S. GOVT. PUBS.
DEPOSITORY 376

[To accompany S. 410]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 410) to repeal the Commercial and Apartment Conservation Service, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Conservation Service Reform Act of 1986".

TITLE I—RESIDENTIAL CONSERVATION SERVICE

SEC. 101. RESTATEMENT OF FINDINGS.

Section 102(a) of the National Energy Conservation Policy Act (42 U.S.C. 8201(a)) (relating to findings) is amended to read as follows:

"(a) FINDINGS.—The Congress finds that—

"(1) the United States has survived a period of energy shortage and has made significant progress toward improving energy efficiency in all sectors of the economy;

"(2) effective measures must continue to be taken by the Federal Government and other users and suppliers of energy to control the rate of growth of demand for energy and the efficiency of its use;

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"(3) the continuation of this effort will permit the United States to become increasingly independent of the world oil market, less vulnerable to interruption of foreign oil supplies, and more able to provide energy to meet future needs; and

"(4) all sectors of the economy of the United States should continue to reduce significantly the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.".

SEC. 102. CHANGES IN CERTAIN PLAN REQUIREMENTS.

(a) INFORMATION REQUIREMENTS MADE APPLICABLE UNTIL JUNE 30, 1989.—(1) Section 215(a) and section 217(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8216(a) and 42 U.S.C. 8218(a)(1)) (relating to utility programs and home heating supplier programs) are amended by striking out "January 1, 1985" each place it appears and inserting in lieu thereof "June 30, 1989 (but not more often than once during the period beginning on the date of the enactment of the Conservation Service Reform Act of 1986 and ending on June 30, 1989)".

(2)(A) Section 215(d) of such Act (42 U.S.C. 8216(d)) is amended by striking out "January 1, 1985" and inserting in lieu thereof "June 30, 1989".

(B) The amendment made by subparagraph (A) shall apply only with respect to persons who become customers of a utility after the date of the enactment of this Act.

(b) ELIMINATION OF REQUIREMENTS THAT PUBLIC UTILITIES ARRANGE FOR INSTALLATION OF SUGGESTED MEASURES AND FOR RELATED LOANS; ELIMINATION OF LISTING REQUIREMENTS.—

(1) Section 215(b) of such Act (42 U.S.C. 8216(b)) (relating to project manager requirements) is amended—

(A) by striking out "Each utility program shall include" through "procedures" and inserting in lieu thereof "Each utility program shall include procedures";

(B) by striking out "to" through "inspect" and inserting in lieu thereof "to inspect"; and

(C) by striking out "inspection;" and all that follows and inserting in lieu thereof "inspection.".

(2) Section 217(a)(2) of such Act (42 U.S.C. 8218(a)(2)) (relating to home heating supplier programs) is amended—

(A) by striking out "will—" through "inspect" and inserting in lieu thereof "will inspect"; and

(B) by striking out "installing, suggested measures;" and all that follows and inserting in lieu thereof "installing, suggested measures.".

(3) Section 213(a) of such Act (42 U.S.C. 8214(a)) (relating to general plan requirements) is amended—

(A) by striking out paragraphs (2) and (3); and

(B) by redesignating paragraphs (4) through (9) as paragraphs (2) through (7), respectively.

(c) RULES.—Section 212(b)(2) of such Act (42 U.S.C. 8213(b)(2)) (relating to rules of the Secretary) is amended—

(1) by striking out subparagraphs (E) and (F), and

(2) by inserting "and" at the end of subparagraph (C).

(d) DEFINITIONS.—(1) Section 210(9) of such Act (42 U.S.C. 8211(9)) (relating to definitions) is amended to read as follows:

"(9) The term 'residential building' means any building used for residential occupancy which is not a new building to which final standards under section 304(a) of the Energy Conservation and Production Act apply and which has a system for heating or cooling, or both.".

(2) Section 212(c)(4) of such Act (42 U.S.C. 8213(c)(4))(relating to TVA) is amended to read as follows:

"(4) In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in a Governor, a State regulatory authority, a State agency, or an agency or instrumentality of a State under this part shall be vested in the Tennessee Valley Authority.".

(e) EXEMPTION.—Section 215 of such Act (42 U.S.C. 8216) (relating to utility programs), as amended by subsection (h)(7) of this section, is amended by adding at the end the following new subsection:

"(g) EXEMPTION OF CERTAIN MULTIFAMILY BUILDINGS.—The provisions of this section shall not apply to any building which has five or more dwelling units and which does not contain individual meters for the dwelling units therein.".

(f) EFFECT OF 1986 AMENDMENTS ON APPROVED PLANS FOR PURPOSES OF FEDERAL STANDBY AUTHORITY.—Section 219 of such Act (42 U.S.C. 8220) (relating to Federal standby authority) is amended by adding at the end thereof the following new subsection:

"(e) PLANS APPROVED BEFORE 1986 AMENDMENTS.—For purposes of this section, any residential energy conservation plan which was approved by the Secretary before the effective date of the Conservation Service Reform Act of 1986 shall be treated as an approved plan which is adequately implemented if such plan is adequately implemented in accordance with the requirements of this Act as amended by the Conservation Service Reform Act of 1986.

(g) TEMPORARY EXEMPTIONS.—Section 218(a) of such Act (42 U.S.C. 8219(a)) (relating to temporary exemptions) is amended by striking out the last sentence and inserting in lieu thereof the following: "Such temporary exemption may be granted or renewed until such date as determined by the Secretary.".

(h) CONFORMING AMENDMENTS.—

(1) Section 210(16) of such Act (42 U.S.C. 8211(16)) is amended by striking out "215(b)(1)(A)" and inserting in lieu thereof "215(b)".

(2) Section 212(b)(2)(C) of such Act (42 U.S.C. 8213(b)(2)(C)) is amended by striking out "213(a)(4)" and inserting in lieu thereof "213(a)(2)".

(3) Section 213(b)(2)(A) of such Act (42 U.S.C. 8214(b)(2)(A)) is amended by striking out "215(b)(1)" and inserting in lieu thereof "215(b)".

(4) Section 214(b) of such Act (42 U.S.C. 8215(b)) is amended by striking out "(8)" and inserting in lieu thereof "(6)".

(5) Section 215(a)(3) of such Act (42 U.S.C. 8216(a)(3)) is amended by striking out "and the lists referred to in section 213(a) (2) and (3)".

(6) Section 215(d) of such Act (42 U.S.C. 8216(d)) is amended by striking out ", the offer required under subsection (b)(1)(A)" and all that follows and by inserting in lieu thereof "and the offer required under subsection (b).".

(7) Section 215 of such Act (42 U.S.C. 8216) is amended by striking out subsection (f) and by redesignating subsection (g) as subsection (f).

(8) Section 216(c)(1) of such Act (42 U.S.C. 8217(c)(1)) is amended by striking out subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(9) Section 216(c)(2)(C) of such Act (42 U.S.C. 8217(c)(2)(C)) is amended by striking out "on the lists referred to in section 213(a)(2)".

(i) STATUTORY CONSTRUCTION.—Nothing in the amendments made by subsections (b), (c), (g), and (h) shall prevent implementation of a plan or program pursuant to the National Energy Conservation Policy Act as in effect before the date of the enactment of this Act.

(j) EFFECTIVE DATE AND OTHER REQUIREMENTS.—

(1) The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

(2) The Secretary of Energy shall, within the 180-day period referred to in paragraph (1), amend the rules promulgated under section 212 of the National Energy Conservation Policy Act to carry out the amendments made by this Act.

(3) SPECIAL REQUIREMENT FOR PLANS APPROVED BEFORE 1986 AMENDMENTS.—The Secretary of Energy shall, with respect to any residential energy conservation plan approved by the Secretary of Energy before the effective date (as described in paragraph (1)) of the amendments made by this section, require the appropriate official in charge of such plan to notify the Secretary of Energy, within 120 days of the date of enactment of this Act, that the amendments made by subsections (a), (d), and (e) of this section shall be implemented for the duration of such plan. The Secretary may not impose any other notice or approval requirement on a Governor or agency or instrumentality of a State with respect to such amendments.

SEC. 103. ALTERNATIVE PLANS FOR RESIDENTIAL BUILDINGS.

(a) IN GENERAL.—The National Energy Conservation Policy Act (42 U.S.C. 8201 et seq.) is amended by inserting the following new sections after section 225:

"SEC. 226. ALTERNATIVE STATE PLANS.

"(a) IN GENERAL.—A Governor of any State, any State regulatory authority, or any agency or instrumentality of a State may elect, to the extent authorized under State law, to formulate and certify an alternative State plan for residential buildings under this section.

"(b) CONSEQUENCES OF CERTIFICATION.—(1) Beginning with the date on which the certification of a plan is made with respect to a State under subsection (d.) and ending with the date on which a plan is no longer in effect under this section with respect to such State—

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"(A) subsections (a) through (c)(3) of section 212, sections 213 through 215 and sections 217 and 218 shall not apply with respect to—

"(i) regulated utilities in such State, and

"(ii) nonregulated utilities which are included in the plan;

"(B) section 219 shall apply to utilities described in subparagraph (A) only to the extent provided for in subsection (f); and

"(C) sections 212 through 219 shall apply to nonregulated utilities which are not included in the plan or which have not received an exemption under section 227.

"(2) Except as provided in subsection (f), any State for which a plan is certified under subsection (d) shall continue to have such plan in effect until June 30, 1989.

"(c) CONTENT OF PLAN.—A plan certified pursuant to this section shall—

"(1) be designed to result in annual residential energy conservation savings of 2 percent or more;

"(2) contain the goals established for the plan and an analysis of the data and rationale used by the entity in charge of formulating the plan to determine that the plan is likely to achieve such goals;

"(3) contain adequate procedures to assure that, if a public utility supplies or installs residential energy conservation measures, such actions shall be consistent with section 216 and prices and rates of interest charged shall be fair and reasonable; and

"(4) contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such plan.

"(d) CERTIFICATION.—(1) The entity which elects to certify a plan under this section shall certify, pursuant to a form to be prescribed by the Secretary (except as provided by paragraph (2)), to the Secretary that—

"(A) the plan meets the requirements of subsection (c);

"(B) the plan is likely to achieve the goals established for the plan if it is adequately implemented; and

"(C) the plan will be adequately implemented.

"(2) If a form is not made available by the Secretary within 90 days after the date of the enactment of this section, the entity in charge of certifying the plan may make such certification on a form prescribed by such entity.

"(3) Any certification under this subsection shall include a detailed explanation of the manner in which the contents of the plan will be implemented.

"(e) ANNUAL REPORT.—(1) The entity which certifies a plan under subsection (d) shall submit an annual report to the Secretary, within 60 days after the end of the 1-year period to which the report relates, describing the implementation of the plan and the results thereof.

"(2) Such report shall include—

"(A) a statement of the number of residential buildings receiving benefits under the plan,

"(B) an estimate of the actual energy savings resulting from the plan and a description of the sources of such savings,

"(C) a statement of the percentage of individuals with low and moderate incomes who receive benefits under the plan,

"(D) a detailed description of the benefits provided under the plan and of how the plan is implemented, and

"(E) the names of the entities carrying out the plan.

"(3) The first such report shall be made by an entity within the 14-month period that begins with the date that such entity certified a plan under this section.

"(f) ADMINISTRATIVE AND JUDICIAL ENFORCEMENT PROCEEDINGS.—(1)(A) At any time more than 1 year after an alternative State plan has been certified under subsection (d) with respect to a State, any customer of a utility subject to such alternative State plan may petition the Secretary of Energy to conduct a public hearing to determine if the alternative State plan has been adequately implemented. A copy of such petition shall be transmitted to the entity in charge of the plan on the same date it is transmitted to the Secretary.

"(B) Within 60 days after the date on which a petition is received under subparagraph (A), the Secretary shall—

"(i) conduct the hearing requested in such petition; or

"(ii) notify in writing the customer submitting such petition of the Secretary's reasons for determining that such a hearing is not justified in the public interest.

"(C) The Secretary shall provide advance notice to the public of any hearing carried out as a result of a petition submitted under subparagraph (A). Any determination by the Secretary concerning the adequacy of the implementation of any alternative State plan shall be on the record and shall be published in the Federal Register within 60 days after such determination is made.

"(D) Any person alleging that he is likely to be injured as a result of a determination by the Secretary under this paragraph may, within 60 days after publication or notification of such determination, institute an action appealing the determination in the United States Court of Appeals for the appropriate judicial circuit. The Court shall review the determination of the Secretary in accordance with the Administrative Procedures Act, and shall have jurisdiction to affirm, modify, set aside, in whole or in part, or to remand such determination to the Secretary for such other action as the Court may direct.

"(2) Except as provided in paragraph (3), if any determination by the Secretary that the alternative State plan has not been adequately implemented becomes final and may not be appealed, the Secretary shall, within 30 days of the date on which the determination may no longer be appealed, initiate standby authority under section 219 with respect to such State.

"(3) If a State which had an approved plan in effect under section 212 on the day before the date on which certification was made under this section informs the Secretary in writing, within 30 days after receiving a copy of the petition described in paragraph (1), that it will no longer implement a plan certified under this section and that it will implement the approved plan which was in effect in the

State on the day before certification of the alternative plan under this section, then—

"(A) the determinations and actions described in paragraph (1) may not be carried out; and

"(B) sections 212 through 219 shall apply in such State except to the extent that waivers are provided for utilities under section 227 in such State.

"(g) COVERAGE.—A plan certified under this section shall not apply to utilities other than utilities covered under section 211(a).

"(h) INCLUSION OF NONREGULATED UTILITIES.—A nonregulated utility may not be included in a plan under this section unless such inclusion is authorized under State law or the nonregulated utility agrees to such inclusion.

"(i) INCENTIVES.—The entity in charge of a plan under this section, or a State regulatory authority, may, to the extent permitted under State law, provide incentives for utilities to meet the goals contained in the State's alternative plan, including providing such utilities that meet or exceed such goals with a rate of return on expenditures made for the purpose of accomplishing such goals.

"(j) UTILITIES WITH RETAIL SERVICE TERRITORIES IN MORE THAN ONE STATE.—For purposes of this section, any utility with a retail service territory in more than one State shall be considered to be a separate utility with respect to each State in which its retail service territory is located.

"(k) AMENDMENT OF A PLAN.—(1) Except as provided by paragraph (2), a plan certified under this section may be amended by any amendment—

"(A) consistent with the requirements of subsection (c); and

"(B) certified to the Secretary of Energy in a manner consistent with the requirements applicable to the certification of a plan under subsection (d).

"(2) A plan certified under this section may not be amended—

"(A) during the first year after it is certified; or

"(B) more than once a year thereafter.

"SEC. 227. WAIVER FOR REGULATED AND NONREGULATED UTILITIES.

"(a) WAIVER.—Any utility subject to this part may, upon request, receive a waiver from the Secretary from any provision of this part or from any provision of a State residential energy conservation plan under this part if the utility shows in appropriate State proceedings and the appropriate State officials find that—

"(1) the existing and planned residential energy conservation programs that will be implemented by the utility if a waiver from such provision is approved will result in savings in petroleum, natural gas or electric energy consumed in residential buildings served by the utility that are equal to or greater than the savings that would be achieved in connection with a properly implemented state residential conservation service plan under this part; and

"(2) adequate procedures are in effect that prevent unfair, deceptive or anticompetitive acts or practices affecting commerce that relate to the implementation of such residential energy conservation programs, including provisions to assure that any person who alleges any injury resulting from unfair, deceptive

or anticompetitive acts or practices in connection with such programs shall be entitled to redress under such procedures as may be established by the Governor in the State in which the utility provides utility service.

"(b) DEFINITION.—For purposes of this section the term 'residential energy conservation program' means any program carried out by a utility that has as its purpose—

"(1) increasing the efficiency with which petroleum, natural gas or electric energy is consumed in residential buildings served by such utility; or

"(2) utilizing solar or other forms of renewable energy in residential buildings served by such utility.

"(c) APPROVAL.—The Secretary shall approve a request of a utility for a waiver under subsection (a) if the Secretary determines that—

"(1) opportunity for a hearing on the request for a waiver has been provided in the State in which the utility provides utility service; and

"(2) in the case of a regulated utility, the Governor of the State in which the utility provides utility service and the State regulatory authority that has ratemaking authority with respect to such utility both—

"(A) find that the showings under subsection (a)(1) and (2) are sufficient; and

"(B) support the request by the utility for the waiver; or

"(3) in the case of a nonregulated utility subject to a State residential energy conservation plan under section 212(c)(2), the Governor of the State in which the utility provides utility service—

"(A) finds that the showings under subsections (a)(1) and (2) are sufficient; and

"(B) supports the request by the utility for the waiver.

"(d) ANNUAL REVIEW AND REVOCATION OF WAIVER.—(1) The provisions of this subsection do not apply to a nonregulated utility unless such utility is subject to a State residential energy conservation plan under section 212(c)(2).

"(2) Any utility that receives a waiver under this section shall provide the Governor of the State in which that utility provides utility service with an annual report describing the performance of its residential energy conservation programs in relation to the showings of such utility under subsections (a)(1) and (2).

"(3) The Secretary shall revoke any waiver received by a utility under this section upon a request under this subsection by the Governor of the State in which the utility provides utility service. Such a request shall be made upon a finding—

"(A) in the case of a regulated utility, by such Governor with the concurrence of the State regulatory authority that has ratemaking authority with respect to such utility; or

"(B) in the case of a nonregulated utility subject to a State residential energy conservation plan under section 212(c)(2), by such Governor,

that the savings described in subsection (a)(1) on an annual basis are less than the savings in the year prior to the approval of the waiver or that the procedures referred to in subsection (a)(2) are no longer adequate.

"(4) A request under paragraph (3) with respect to any utility may be submitted to the Secretary by a Governor only after review and opportunity for a hearing on the performance of the residential energy conservation programs of such utility. In order to facilitate such review and hearing, the utility shall provide to the Governor such information as the Governor requests about such residential energy conservation programs.".

(b) The table of contents for the National Energy Conservation Policy Act is amended by adding at the end of the table of contents for part 1 of title II the following:

"Sec. 226. Alternative State plans.".
"Sec. 227. Waiver for regulated and nonregulated utilities.".

SEC. 104. REPORTS AND DISSEMINATION OF INFORMATION.

(a) IN GENERAL.—Section 225 of the National Energy Conservation Policy Act (42 U.S.C. 8226) (relating to a Federal Trade Commission study and report submitted before January 1, 1982) is amended to read as follows:

"SEC. 225. REPORTS AND DISSEMINATION OF INFORMATION.

"(a) GENERAL REPORT.—(1) No later than December 31, 1987, and December 31, 1989, the Secretary shall submit a report to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Energy and Natural Resources of the Senate relating to the operation of this part.

"(2) Each such report shall include—

"(A) a comparison of estimated actual and predicted energy savings resulting from plans under this part,

"(B) identification of the most effective plans (or portions thereof),

"(C) an analysis, based on completed audits and other relevant data, of the energy saving potential of the installation of additional residential conservation measures, and

"(D) an analysis of economic, technical, behavioral, and other factors considered relevant to energy consumption by the Secretary.

Nothing in this paragraph shall require a survey of each residential building in which a residential energy conservation measure has been installed under this part.

"(b) SUMMARY OF ALTERNATIVE PLAN AND UTILITY WAIVER REPORTS.—No later than December 31, 1987, and December 31, 1989, the Secretary shall submit a report to the Chairman of the Committee on Energy and Commerce of the House of Representatives and the Chairman of the Committee on Energy and Natural Resources of the Senate summarizing the annual reports the Secretary received under section 226(e).

"(c) DISSEMINATION OF INFORMATION.—(1)(A) The Secretary shall at least annually, in fiscal years beginning after September 30, 1986, disseminate to the States and public utilities information providing technical assistance and relating to the most cost-effective energy conservation procedures and devices (including residential energy conservation measures) and the most successful plans (or portions thereof) under this part.

"(B) The Secretary shall make the information described in subparagraph (A) available to the public.

"(2) The Secretary shall conduct seminars in various regions of the United States to disseminate information described in paragraph (1).".

(b) CLERICAL AMENDMENT.—The table of contents of such Act is amended by striking out the item relating to section 225 and inserting in lieu thereof the following:

"Sec. 225. Reports and dissemination of information.".

(c) REPORT BY COMPTROLLER GENERAL.—(1) The Comptroller General shall prepare and transmit to Congress before December 31, 1986, a report evaluating the utility and home heating supplier plans implemented under part 1 of title II of the National Energy Conservation Policy Act.

(2) The Secretary of Energy shall conduct a survey in consultation with the Comptroller General to collect the information the Comptroller General determines is necessary for the preparation of such report.

(3) The report referred to in paragraph (1) shall examine and assess—

(A) the potential for achievable energy savings through installation of residential energy conservation measures in residential dwellings in the United States and the importance of the programs carried out by the Residential Conservation Service of the Department of Energy in achieving these savings;

(B) the costs of Residential Conservation Service programs in a representative sample of States, taking into consideration the costs to the taxpayer and ratepayers of affected utilities;

(C) the benefits of Residential Conservation Service programs in a representative sample of States, taking into consideration the value of energy conservation and the value of deferral of investment in new capacity to provide energy;

(D) efforts of utilities to encourage the implementation of residential energy conservation measures by their customers and the relationship between these efforts and Residential Conservation Service programs;

(E) measured energy savings achieved in residential dwellings in which residential energy conservation measures have been installed under such programs;

(F) the extent to which utilities have adopted programs voluntarily or under State law that offer more potential for encouraging energy efficiency than do the programs carried out by the Residential Conservation Service;

(G) the extent to which modifications in the regulations implementing the programs carried out by the Residential Conservation Service could improve the cost effectiveness of the programs;

(H) legislative changes that are necessary to improve the cost effectiveness of residential energy conservation programs;

(I) the extent of unfair, deceptive, or anticompetitive acts or practices affecting commerce that relate to the implementation of such residential energy conservation programs, and the ade-

quacy of procedures which are in effect to prevent such unfair, deceptive, or anticompetitive acts or practices; and

(J) such other matters as the Comptroller General considers appropriate in order to assist the Congress in deciding the future of the programs carried out by the Residential Conservation Service.

SEC. 105. TERMINATION.

(a) IN GENERAL.—Part I of title II of the National Energy Conservation Policy Act (42 U.S.C. 8211 and following), as amended by section 103, is amended by adding at the end the following new section:

"SEC. 228. TERMINATION.

"Effective June 30, 1989, all authority, including the authority to enforce any prohibitions, under this part shall terminate, except that such expiration shall not affect any action or proceeding based upon an act committed prior to midnight June 30, 1989, and not finally determined by such date.".

(b) CLERICAL AMENDMENT.—The table of contents of such Act, as amended by section 103(c) of this Act, is amended by inserting after the item relating to section 227 the following new item:

"Sec. 228. Termination.".

SEC. 106. SUPPLY AND INSTALLATION BY PUBLIC UTILITIES.

(a) GENERAL EXEMPTION.—Section 216(d) of the National Energy Conservation Policy Act (42 U.S.C. 8217(d)) (relating to general exemptions from prohibitions on supply and installation) is amended—

(1) by striking out "The" and inserting in lieu thereof:

"(1) Except as provided in paragraph (2), the";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(3) by adding at the end thereof the following new paragraph:

"(2) Effective July 1, 1987, subparagraphs (A) and (B) of paragraph (1) shall not apply to the supply or installation of residential energy conservation measures other than measures which the Secretary determines were being installed or supplied by a public utility during the 12-month period ending June 1, 1985.".

(b) PROHIBITION; ENFORCEMENT.—(1) Section 216 of such Act (42 U.S.C. 8217)(relating to prohibitions on supply and installations) is amended by striking out subsection (g)(2) and subsection (h) and inserting in lieu thereof the following:

"(2) No public utility that has an exemption or waiver under this section may carry out under this Part and pursuant to an exemption or waiver any activity if the Federal Trade Commission, pursuant to subsection (h), or a State regulatory authority, pursuant to State law, has determined that such activity involves—

"(A) charging unfair or unreasonable prices or rates of interest with respect to the supply and installation of residential energy conservation measures; or

"(B) engaging in unfair methods of competition or unfair or deceptive acts or practices with respect to such supply and installation.

"(h) ENFORCEMENT.—(1) For the purpose of determining whether a public utility which has an exemption or waiver under this section is engaging in any activity described in subsection (g)(2), a person alleging injury from any such activity may request—

"(A) to the extent authorized under State law, a State regulatory authority; or

"(B) in any case described in paragraph (2), the Federal Trade Commission,

to review an activity being carried out by such a public utility in whole or in part in such State. Such request shall contain a description of the actions of the utility alleged to constitute an activity described in subsection (g)(2); an allegation that an injury has been incurred by the person requesting the review; and an allegation that such injury resulted from an activity described in subsection (g)(2).

"(2) The Federal Trade Commission may review an activity of a public utility as a result of a request made under paragraph (1) only if—

"(A) a State regulatory authority has—

"(i) informed the resident making the request that it will not review such activity for the purpose described in paragraph (1); or

"(ii) within the 90-day period beginning on the date on which the request to review such activity was made to the State regulatory authority by the resident, failed to inform the resident that it will review such activity for such purpose; or

"(B) a State regulatory authority has informed the resident that it will review such activity for such purpose but has failed to initiate a proceeding for such purpose during the 6-month period beginning on the date on which the request to review such activity was made to the State regulatory authority by the resident.

"(3) If a request for review is made to the Commission in any case described in paragraph (2), and the Commission determines, on the basis of the information provided, that there is reason to believe that the public utility is carrying out an activity described in subsection (g)(2), the Commission shall issue and serve upon such utility a complaint and a notice of hearing and conduct a proceeding in accordance with section 5(b) of the Federal Trade Commission Act to determine if such an activity is being carried out by the utility.

"(4) If the Commission makes a determination pursuant to a proceeding described in paragraph (3) that a public utility is carrying out an activity described in subsection (g)(2) of this section, the Commission shall, utilizing the authority of the Commission to enforce prohibitions made by section 5 of the Federal Trade Commission Act, take appropriate action to enforce the prohibition in subsection (g)(2) of this section.

"(5) Any violation of a prohibition contained in this section other than a violation of subsection (g)(2) shall be treated, for purposes of section 219(d), as a violation of a plan promulgated under section 219(a).".

(c) CONFORMING AMENDMENTS.—(1) Section 216(c)(2)(A) of such Act (42 U.S.C. 8217(c)(2)(A)) (relating to an exemption from the prohibition on supply and installation by a public utility) is amended

by inserting the following before the semicolon at the end: "or other activities described in subsection (g)(2)".

(2) Section 216(f) of such Act (42 U.S.C. 8217(f)) (relating to the applicability of section 215) is amended by striking out "(d)(2)", "(d)(1)", and "(d)(3)" and inserting in lieu thereof "(d)(1)(B)", "(d)(1)(A)", and "(d)(1)(C)", respectively.

(3) The heading of subsection (g) of section 216 is amended to read as follows: "Authority to Monitor and Terminate Certain Activities by Utilities.—".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective 180 days after the date of the enactment of this Act.

TITLE II—COMMERCIAL BUILDINGS AND MULTIFAMILY DWELLINGS

SEC. 201. REPEAL OF TITLE VII OF THE NATIONAL ENERGY CONSERVATION POLICY ACT.

(a) IN GENERAL.—Title VII of the National Energy Conservation Policy Act (42 U.S.C. 8281 and following) (relating to energy conservation for commercial buildings and multifamily dwellings) is hereby repealed.

(b) CLERICAL AMENDMENT.—The table of contents for such Act is amended by striking out the items relating to such title VII.

(c) AUTHORITY TO CONTINUE CERTAIN STATE ENERGY CONSERVATION PLANS.—Notwithstanding subsection (a), any State energy conservation plan for commercial buildings and multifamily dwellings approved under section 721 of the National Energy Conservation Policy Act before August 1, 1984, may, with respect to regulated utilities, continue in effect until January 1, 1990.

SEC. 202. DEMONSTRATION PROJECTS FOR ENERGY EFFICIENCY IN COMMERCIAL BUILDINGS.

The Secretary of Energy shall, using funds appropriated for energy conservation activities of the Department of Energy, carry out demonstration projects by sharing the cost of the construction and

development by nongovernmental entities of facilities which demonstrate innovative technologies for utility applications that increase energy efficiency in commercial buildings.

And the House agree to the same.

JOHN D. DINGELL,
EDWARD J. MARKEY,
RALPH M. HALL,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
Managers on the Part of the House.

JAMES A. MCCLURE,
MARK O. HATFIELD,
PETE V. DOMENICI,
FRANK H. MURKOWSKI,
DON NICKLES,
J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,

HOWARD M. METZENBAUM,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the house to the bill (S. 410) to repeal the Commercial and Apartment Conservation Service and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill the House amendment and the substitute corrections, conforming changes made necessary by agreements reached by the conferees and minor drafting and clarifying changes.

SECTION 101

The Senate bill did not have provisions amending Section 102(a) of the National Energy Conservation Policy Act (NECPA).

The House amendment amends the findings of NECPA. to reaffirm the commitment of the Federal government to energy conservation.

The conferees agreed to the House provision.

SECTION 102

The Senate bill extended the informational requirements of Section 215(a), (d) and 217(a)(1) of NECPA, relating to the Residential Conservation Service (RCS), until January 1, 1988 and extended the provisions for temporary exemptions under Section 218(a) of NECPA.

The House amendment extended the informational requirements until January 1, 1990 and had identical language to the Senate bill relating to temporary exemptions. In addition the House amendment eliminated the requirements that utilities arrange for installation of conservation measures, for facilitating related loans and for listing of project managers. Finally, the House amendment expanded RCS coverage to include residential buildings with five or more dwelling units in which the dwelling units are individually metered for energy use. The conferees agreed to each of the House provisions except that the date for the expiration of the informational requirements was agreed to be June 30, 1989. The conferees intend that no utility or home heating supplier be required to issue more than one informational announcement between the date of enactment and June 30, 1989. The conferees also intend that, as a

result of the expansion of RCS coverage, no state be required to amend or resubmit its RCS plan to the Department of Energy.

SECTION 103

The Senate bill allowed the Department of Energy (DOE) to grant any regulated or nonregulated utility under the RCS program a "waiver" from any requirement of the RCS statute or from any requirement of a state RCS plan under the RCS statute. A utility could receive a waiver if the utility could show that more energy savings would result from energy conservation programs that would be implemented if the waiver were granted, and that adequate procedures would be in effect to prevent unfair, deceptive or anticompetitive acts or practices in connection with those programs. Judgments about these savings, about the adequacy of these procedures and whether the waivers should be revoked under the enforcement provisions would be made in appropriate State proceedings.

The House amendment allowed an exemption from the requirements of the RCS program for states or utilities which adopt an "alternative plan". Under this provision a state entity could formulate and certify to the DOE an Alternative State Plan. In addition to defining the formulation and certification procedures, the House amendment specified four required provisions and several discretionary provisions of the State Alternative Plan. The enforcement provisions of the House amendment allowed any resident of a state with an Alternative State Plan to petition DOE to revoke the State Alternative Plan on the ground that the plan had not been adequately implemented. If the Secretary found that the Plan had not been adequately implemented, he would implement the regular RCS program within 90 days. If the Secretary did not implement the regular RCS program within 90 days, the petitioner could bring a de novo action in the appropriate U.S. District Court to require the Secretary to implement the regular RCS program.

The provisions of the House amendment governing Alternative Utility Plans were similar to those governing Alternative State Plans in formulation and certification of the plan, content of the plan, annual report, and administrative and judicial enforcement proceedings.

The conferees agreed to adopt the Senate provision regarding utility waivers, with a modification of the standard that must be met in order to receive a waiver. The conferees agreed to adopt the House provisions regarding Alternative State Plans, with deletion of the plan formulation provisions, deletion of the discretionary plan content provisions, and modification of the enforcement provisions.

The conferees were concerned that utilities conducting an approved RCS program that had resulted in minimal savings of energy, under the waiver provisions in S. 410, would be able to qualify an alternative program that also could result in minimal energy savings. The waiver in S. 410 required that the proposed alternative program be designed to save at least as much as or more than the RCS program.

To avoid such occurrences, the conferees intend that, upon application by a utility for a utility waiver pursuant to Section 227(a), the appropriate state officials, by appropriate procedures, examine the currently implemented RCS plan and make a determination on whether it has been properly implemented. State officials may take into consideration such factors as methods used by the utility for: marketing the program to different groups, auditor training, predicting retrofit performance, conducting the audits, delivering audit results, following up on audits, and delivering related services.

It is the intention of the conferees that, under the State Alternative Plan enforcement provisions, petitioners be limited to persons alleging that they are likely to be injured as a result of the Secretary's determination regarding the adequacy of alternative plan implementation. The conferees further intend that the court shall review this determination by the Secretary in accordance with the Administrative Procedures Act.

SECTION 104

The Senate bill required the Secretary of Energy to conduct a survey in consultation with the Comptroller General to collect information for a report to Congress, by the Comptroller General, evaluating the utility and home heating supplier programs of the RCS program.

The House amendment required DOE to submit a report to the appropriate committees of Congress comparing the predicted energy savings with estimated actual energy savings achieved under both the RCS and alternative plans, and identifying the most successful programs. In addition, DOE was required to report annually to Congress on alternative plans and to disseminate information to states and utilities on the most effective programs and on methods for calculating energy consumption reductions.

The conferees agreed to adopt the provisions of both the Senate and House.

SECTION 105

The Senate bill provided for the termination of part I of Title II of NECPA, relating to the RCS program, on January 1, 1988.

The House amendment provided for this termination on January 1, 1990, except for Section 216 and certain sections necessary to enforce this section.

The conferees agreed that all authority under Part I of Title II of NECPA shall expire effective June 30, 1989, including section 216 and all provisions relating to that section.

SECTION 106

The Senate bill clarified the rights of persons to take actions with respect to anticompetitive acts or practices related to activities under the RCS program. The bill provided that nothing in this Part of NECPA shall bar any person from taking an action with respect to any anticompetitive act or practice under this Part, or

convey to any person immunity from liability, or create defenses or modify any private right of action under antitrust laws.

The House amendment provided an opportunity for a review of potential competitive abuses in each of the exemptions from the prohibitions in NECPA that prohibit utilities from directly installing or supplying conservation measures. The House amendment restricted the "grandfather" exemption to those utilities that were installing or supplying specific conservation measures during the year prior to June 1, 1985. In addition, the House amendment provided an interested resident the opportunity for a review by a State regulatory authority or by the Federal Trade Commission (FTC) to determine whether a utility which had an exemption was engaging in anticompetitive activites. Under the House amendment, anticompetitive activities involved three types of activities: charging unfair or unreasonable prices or rates of interest; engaging in unfair methods of competition or unfair or deceptive acts or practices; or engaging in "unauthorized cross subsidization".

The conference agreement follows the House provisions, except that the FTC review procedures are modified and "unauthorized cross subsidization" is not included as an activity subject to review under section 106 enforcement procedures. Under existing law, the Secretary of Energy has the authority to terminate utility supply, installation or financing activities related to energy conservation measures if such utility is providing loans at unreasonable terms or conditions, or if loans, supply or installation activities are carried out in such a way as to have an adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts or practices. In deleting "unauthorized cross subsidization" the conferees do not intend to preclude state and Federal officials from examining cross subsidization when making determinations on anticompetitive activity. However, the conferees were concerned that the inclusion of "unauthorized cross subsidization" as a new standard for activity would, because of the term's ambiguity, result in unanticipated or possibly unintended legal interpretations. Accordingly, the conferees deleted the new anticompetitive standard of "unauthorized cross subsidization."

The conferees also modified the FTC procedures for the review of allegations of anticompetitive activity. Although the conferees recognized the need to provide the opportunity for review of such allegations, the conferees intend that the Commission retain the authority to reject requests for review containing frivolous or unsubstantiated allegations. Accordingly, the conferees added language requiring that any request for review contain a description of the alleged anticompetitive activities, and allegations that the complainant has been injured and the injury resulted from the anticompetitive activities.

The conferees intend that the Commission's review shall not be subject to the "public interest" test required for complaints issued applied to the review of antitrust violations conducted pursuant to Section 5 of the Federal Trade Commission Act. The new standard of review consists of the Commission's determination that it has reason to believe that a utility is carrying out an activity described in Section 216(g)(2). If the Commission makes such a determination, then it is required to issue a complaint to initiate a proceeding in

accordance with Section 5(b) of the Federal Trade Commission Act. If the Commission finds that the utility is carrying out a proscribed activity, it shall take appropriate action, under the authority of the Federal Trade Commission Act, to enforce the prohibition against such activities.

SECTION 201

The Senate bill provided for the repeal of Title VII of NECPA relating to energy conservation for commercial buildings and multifamily dwellings, and for the continuation for one year after the date of enactment of plans approved before August 1, 1984, under Section 721 of NECPA.

The House amendment also provided for the repeal of Title VII of NECPA and for indefinite continuation of plans approved before August 1, 1984, under Section 721 of NECPA.

The conferees agreed to adopt the language of the House amendment with the limitation of January 1, 1990 for continuation of plans approved before August 1, 1984, under Section 721.

SECTION 202

The House amendment provided that the Secretary of Energy shall carry out demonstration projects which demonstrate innovative technologies for utility applications that increase energy efficiency in commercial buildings.

The Senate bill had no comparable provision.

The conferees agreed to adopt the provision of the House amendment.

JOHN D. DINGELL,
EDWARD J. MARKEY,
RALPH M. HALL,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
Managers on the Part of the House.

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Managers on the Part of the Senate.

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